IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WP(C).No. 31049 of 2006(U)

PETITIONER:

SASIKALA.D.S.,
D/O.SATHYABHAMA, AGED 43 YEARS,
RESIDING AT T.C.NO.28/802(1),
FORT HOSPITAL JUNCTION, THIRUVANANTHAPURAM.

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENTS:

1. THE FEDEREAL BANK LIMITED, REPRESENTED
BY ITS CHIEF MANAGER, REGIONAL OFFICE,
FEDERAL TOWERS, M.G.ROAD, THIRUVANANTHAPURAM.

2. JAYAKUMAR.N.,
S/O.NARAYANAN, SAI BHAVAN,
CHELLAMANGALAM, SREEKARIYAM,
THIRUVANANTHAPURAM.

R2 BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)
SMT.ANJU MEERA BIRLA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE APPLICATION FILED AS I.A.NO.1228/2006 ALONG WITH THE COPY OF THE ATTACHMENT SCHEDULE FILED IN OP.NO.406/06 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P2 TRUE PHOTOCOPY OF THE ORDER IN IA.NO.1228/06 IN O.P.NO.406/06, PASSED BY THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P3 TRUE PHOTOCOPY OF THE JUDGMENT IN WP(C).NO.12792/06 PASSED BY THIS COURT DTD. 5/6/2006.

EXT.P4 TRUE PHOTOCOPY OF THE NOTICE DTD. 9/9/2006 ISSUED BY THE IST RESPONDENT BANK TO THE 2ND RESPONDENT.

P.R.RAMAN, J.

W.P.(C).NO.31049 OF 2006

Dated this the 18th day of December, 2006

JUDGMENT

Petitioner is the applicant in I.A.No.1228/2006 in O.P.No.406/2006 before the Family Court, Thiruvananthapuram. By Ext.P2 order the Family Court directed the respondent therein, who is the husband of the petitioner, to furnish security to a tune of Rs.8 lakhs or to show cause why security should not be furnished and in the meantime, conditional attachment of the properties scheduled in the petition was ordered. The order is dated 2nd May, 2006. However, the learned counsel appearing for the petitioner asserts that the attachment continues. According to him, when the properties are under attachment, the lst respondent Bank cannot take possession of the property by exercising its powers under

Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is pointed out by the learned counsel for the Bank that Ext.P4 relates to two items of property of which only one item alone forms part of the attachment as per Ext.P2, and that attachment of the property will not disentitle the Bank from exercising its statutory power.

2. Heard both sides.

3. The mere fact that there is a conditional attachment of property by itself does not prevent the Bank from exercising the statutory right under Section 13(2) of the Act. However, if there is proceeding to sell the property, the same can be sold only subject to any prior charge. Whether the Bank has any prior charge or not will then arise for consideration.

Leaving open the right of the petitioner to raise such contention at the appropriate stage and subject to the above observation, this writ petition is dismissed.

P.R.RAMAN,
JUDGE.

kcv.